

## **SCHEDULE C – TERMS AND CONDITIONS**

**1. DEFINITIONS.** In this Agreement and this Schedule, the following terms have the definitions specified.

“**Content**” means the text, graphics, information, and other content provided by a Party, or used in any Product or the Services, and includes images, pictures, icons, videos, automations, trademarks, trade dress, fonts, case, colors, stylizations, and other material whatsoever.

“**Licensee**” means the Party who signs the execution page of this Agreement as a licensee of the Services.

“**Market Area**” means the United States of America.

“**Party**” and “**Parties**” refer to HELM and/or Licensee.

“**Products**” means the Software and the Services Licensee purchases, as indicated on Schedule A, and includes any additional one-time services Licensee may purchase for which HELM shall invoice Licensee.

“**Services**” is defined in Section 3, below.

“**Software**” is defined in Section 2, below.

“**HELM**” means HELM Technologies, LLC, a limited liability company organized and existing under the laws of the State of South Dakota, U.S.A.

**2. INTRODUCTION.** HELM created and owns *Chatterspot*™ SaaS customer relations management software, useful, among other things, for analyzing, filtering, reporting, and selecting, in a database of customers, persons to be sent customized email and SMS text messages (the “**Software**”). HELM assists its clients in set-up of and training in use of the Software, and provides marketing creative services, such as message template design, producing or authoring content, scripts, and marketing materials preparation.

**3. WHAT YOU PURCHASED.** Subject to this Agreement, and as specifically identified on *Schedule A*, HELM grants Licensee a nonexclusive license in the Market Area (a) to use the Software (subject to each user entering in to HELM’s standard end user license agreement, incorporated herein by this reference), and (b) to receive the related set up services, creative and other services, and initial training identified on *Schedule A (Products and Fees)* (the “Services”). Licensee may purchase additional Products which may be reflected by an amended Schedule A. Licensee may also purchase optional items or services from HELM, for which HELM will invoice Licensee, and all of which shall be deemed to be “**Services**” and part of the Products, and as such subject to this Agreement. Rights not expressly granted are reserved to HELM. Additional edits or customization or enhancements, if authorized by Licensee, are available at HELM’s hourly rates and fees which are subject to change. All fees and charges are non-refundable.

### **4. TRAINING AND SUPPORT.**

**A. Initial Training.** HELM shall provide Licensee the initial remote launch and training on use of the Software as provided on Schedule A. HELM may also provide training videos or user or training documents, all of which belong to HELM and are loaned to Licensee during the term of and for purposes of this Agreement.

**B. Support.** Reasonable support for Software is available to Licensee through contact with HELM’s Account Representative for Licensee designated on Schedule A (or a replacement person designated by HELM for Licensee). HELM is not obligated to update or offer enhancements of the Software. Licensee shall receive all standard Software bug fixes offered to HELM’s clients.

**C. Extras.** If desired by Licensee, HELM may make additional training, creative development, and other services available to Licensee at times and with the fees agreed to by the Parties. HELM may offer enhancements of, or discontinue or otherwise change, the Products, on notice to Licensee.

### **5. MARKETING MESSAGE CONTENT.**

**A. Content from HELM.** The Products that Licensee purchases by this Agreement include HELM providing some or all Content for the messages Licensee sends to its customers. If HELM provides Content for use in Licensee’s messages then Licensee may use that Content, but only during the term of this Agreement for messages sent by the Software. If Licensee makes any suggestions for Content, or makes changes or additions to any of HELM’s Content, then HELM shall own all such suggestions, changes, and additions as HELM’s Content.

**B. License is Responsible for All Messages.** Licensee must review and is responsible for checking, altering and approving all messages sent using the Products, regardless of whether the Content of the message comes in whole or in part from HELM, or from Licensee, or both Parties. Licensee shall review, be responsible for, and determine that every message sent is complete, accurate, compliant (with all applicable federal, state, and local laws; see Section 5.C below), professional (see section 5.D below), and appropriate for Licensee’s desired purposes. Any ideas or suggestions for, or additions to or changes made or requested by Licensee to HELM’s Content shall become HELM’s Content and belong to HELM.

**C. Content Must be Legal.** In preparing, analyzing, and reviewing message Content, Licensee agrees to (i) refrain from deceptive, misleading, or unethical marketing, promotion, or other practices that are or might be detrimental to Licensee, HELM, or the Products or Services, (ii) not send, publish, disseminate, or employ, or cooperate in the publication or utilization of, any false, misleading, or deceptive claim, comparison, contest, offer, review of Licensee’s product, promotion, endorsement, or advertising or promotional material, and (iii) not infringe any trademark, copyright, or other intellectual property right of any third party with or by any Content sent using the Products.

**D. Professional Correct Content.** No message Content Licensee uses shall incite or support terrorism, criminal activity racial unrest, or contain any vulgarity, pornographic material, defaming or slanderous material, racial or socially inappropriate language, image, or inference, or other material which subjects Licensee or HELM to any government investigation, or third-party claim or litigation because of the nature of Content.

**E. Original Licensee Content.** Any Content provided by Licensee to HELM for all or part of any marketing message, must be (i) an original work of authorship of Licensee, (ii) the property of Licensee, or (iii) Content Licensee certifies and has verified is in the public domain and not subject to any license. Any Content provided by Licensee to HELM must be supplied in the manner and format reasonably required by HELM for the Products. If all the Content of a sent message is provided by Licensee, Licensee shall own that Content.

**F. HELM's Branding.** HELM reserves the right to include the message "Powered by HELM", "Powered by Chatterspot" or functionally similar terms in the bottom of all messages it prepares or delivers. Such attribution will be no larger than the text in the main body of the message in which it is contained, and any logo or design will be smaller than Licensee's primary branding therein.

**6. FEES.** The Products are available to Licensee after payment to HELM of the requisite fees, and compliance with this Agreement.

**A. Price List.** The prices to be paid to HELM for the Products are as set forth on *Schedule A (Products and Fees)*.

**B. Payment Due Upon Signing.** Unless otherwise expressly agreed on the signature page of this Agreement, all initial payments to HELM are due and payable upon execution of this Agreement by Licensee.

**C. Automatic Debit by HELM.** Monthly payments are payable in advance on the 25<sup>th</sup> of each calendar month, in payment for the next month. Licensee shall notify HELM at least 15 days before changing its financial institution or account number thereat. If Licensee's automatic withdrawal does not go through within three attempts and 72 hours of billing, then Licensee is liable to HELM for a non-payment fee of \$50 plus interest on any outstanding amount at the lesser of 1.5 percent per annum, compounded monthly, or the highest rate allowed by applicable law.

**D. U.S. Currency.** All references to "dollars," "\$" or money in this Agreement mean currency of the United States of America and all payments to HELM by Licensee shall be in that currency.

**E. Pricing is Net of Sales Tax.** All prices and payments to HELM are net of any applicable federal, state, or local sales or use taxes and are the responsibility of Licensee. Licensee must reimburse HELM if such taxes are levied against HELM for the Products and Services to Licensee.

## **7. LICENSEE'S OBLIGATIONS.**

**A. Legal Compliance.** At its own expense, Licensee shall comply with all applicable federal laws and state laws applicable where Licensee is located and where its marketing message are sent using the Services. Licensee waives any special rights which may accrue to it against HELM under any such laws.

**B. Co-op Reimbursement for Marketing Activities.** Licensee and its personnel at its locations are responsible to submit any co-op or group marketing materials to the applicable approving authority for authorization and any reimbursement. HELM is not responsible for the timing, scope or result of any such request.

**C. Opt-in Permission.** Licensee will ensure all customers sign compliant documents at vehicle delivery and service check out that give licensee and HELM express permission to text and email that customer. Licensee agrees to require all department managers, supervisors, service advisors, and sales people, and an authorized contact for each of its Locations, to opt-in to receive all marketing messages and digital promotions sent to Licensee's customers using the Products, and to receive texts and emails containing marketing and Software update messages from HELM (typically two per month) and the recipient's carrier's data rates may apply. Licensee may elect to opt-out electronically of messages from HELM, but HELM will not be responsible for any missed marketing reminders or updates not received by Licensee or its contact persons.

**D. Upload Customer Data.** To utilize the Products, Licensee's applicable customer lists and contact information (for persons to whom Licensee desires to send messages), must be uploaded to HELM's third party data storage (see Section 8.C). Licensee authorizes HELM to obtain Licensee's customer and prospect data from Licensee's DMS, CRM or other databases from time to time as needed or determined by HELM, and upload it into HELM's third party storage.

**E. Only Permission-Based Recipients.** With the Software, Licensee has the ability to upload "one-off" lists. However, Licensee will only use customer lists for which all recipients have provided unambiguous written or electronic consent to receive email, SMS and/or other electronic communications ("Permission Based Lists"). And receipt of such consent from a customer of Licensee cannot be a condition of a customer's purchase. Licensee understands that use of anything other than Permission Based Lists will jeopardize the success of Licensee's marketing efforts, and will damage HELM's Product systems success for other clients as a source of messages. Thus, utilizing purchased opt-in recipient lists is prohibited without the prior express written consent of HELM in each and every instance, and gives HELM the right to terminate this Agreement upon notice and accelerate all remaining monthly and other amounts due, or that would have become due, under the Agreement through its term (see Section 11.E, below).

**F. No Spam.** Licensee appreciates that spam electronic messaging is annoying to recipients and can be illegal. Licensee agrees not to use the Services to send any spam via text, social media, email, or any other means. All email

and other messages sent by the Products must comply with applicable legal requirements, including clearly identifying Licensee and its address, include criteria for authentication of the communication, and provide an enabled opt-out or unsubscribe click through procedure. HELM's customer support may actively monitor import lists and messages going to recipients. If Licensee is found to be using the Services for non-Permission Based Lists, HELM may without notice suspend Licensee from using the Services (payment of fees to HELM will still apply during any suspension), or HELM may elect to terminate this Agreement upon notice and accelerate all remaining monthly and other amounts due, or that would have become due, under the Agreement through its term (see Section 11.E, below).

## **8. HELM'S OBLIGATIONS.**

**A. No Marketing Plan.** HELM has no obligation to provide any Product or other training or marketing assistance to Licensee other than as set forth in this Agreement, and does not provide a marketing plan, marketing direction, or related sales assistance to Licensee. Licensee acknowledges that HELM is not by this Agreement or any of the Products or the Services providing Licensee a franchise, or any so called "seller assisted marketing plan", or "business opportunity", or anything similar.

**B. Representations of HELM.** HELM is a limited liability company duly organized, existing, and in good standing under the laws of the State of South Dakota, with full power and authority to enter into this Agreement and to perform its obligations herein and under any instrument executed pursuant hereto. HELM's execution of this Agreement and performance of its obligations have been duly authorized by all necessary authority and do not and will not conflict with, any other agreement binding upon HELM or restricting the use of HELM's properties.

**C. Data Protection.** HELM does not store Licensee's data on its servers, but rather on third party servers (HELM currently uses Microsoft's Azure storage service). Accordingly, **HELM SHALL NOT BE RESPONSIBLE FOR ANY CORRUPTION, THEFT, OR LOSS OF ANY OF LICENSEE'S DATA, HOWEVER CAUSED, INCLUDING BY HACKERS.** HELM reserves the right at all times to disclose any information of Licensee or its customers in response to a subpoena or government order or to satisfy any applicable law, regulation, legal process, or governmental request. If HELM receives such a subpoena or order, it will notify Licensee and reasonably cooperate with Licensee in Licensee's efforts, at Licensee's expense, to suppress, limit, modify, or obtain a protective order regarding any required disclosure of confidential information or personal identifiable information of Licensee or of its customers.

**D. Use of Data.** The Products may use Licensee's data for the services provided to Licensee by the Products. HELM may but is not obligated to compile aggregated and non-aggregated data of or from Licensee to check for compliance with applicable laws, or into a form not associated with any identifiable source or person, to develop industry reports, trends, analysis, proof of concept, and development of new or enhanced products and services.

## **9. DISCLAIMER AND LIMITATIONS.**

**A. Disclaimers.** EXCEPT AS EXPRESSLY STATED HEREIN, HELM DISCLAIMS ALL WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COMPATIBILITY, AND ANY WARRANTY ARISING OUT OF ANY PROPOSAL, SPECIFICATION, SAMPLE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE, AND ANY WARRANTY ARISING OUT OF ANY STATUTE OR LAW. NO INFORMATION OR ADVICE FROM HELM SHALL CREATE ANY WARRANTY OR MODIFY THIS DISCLAIMER.

**B. Sole and Exclusive Remedy.** THIS AGREEMENT DEFINES THE SOLE AND EXCLUSIVE REMEDY OF Licensee AND THE SOLE AND EXCLUSIVE LIABILITY OF HELM, REGARDING THIS AGREEMENT INCLUDING ANY DEFECT, DATA LOSS OR PRODUCT INADEQUACY.

**C. Limitation on Liability.** THE AGGREGATE LIABILITY OF HELM FROM OR RELATING TO THIS AGREEMENT OR THE PRODUCTS (REGARDLESS OF THE FORM OF ACTION, WHETHER BY CONTRACT, WARRANTY, TORT, MALPRACTICE, FRAUD, AND/OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT OF LICENSE FEES RECEIVED FOR THE MOST RECENT MONTH. HELM IS NOT LIABLE TO Licensee FOR ANY HACK OR THEFT OF CUSTOMER LISTS, PERSONAL IDENTIFIABLE INFORMATION, OR OTHER DATA.

## **10. PROPERTY RIGHTS & CONFIDENTIALITY.**

**A. Property Rights.** Licensee acknowledges and agrees that this Agreement does not convey to Licensee or its customers any ownership or interest in any patents, trademarks, trade dress, inventions, copyrights, trade secrets, designs, formulas, algorithms, or other intellectual property of HELM or relating to the Products, and that all of the foregoing are owned and held by HELM or its affiliates or licensors.

**B. Confidentiality of Licensee's Data.** During and after this Agreement, HELM shall not disclose Licensee's customer data or customer contact information, nor use it except as provided in this Agreement (see Section 8.C and 8.D, above).

**C. Confidentiality of this Agreement.** The terms and conditions of this Agreement (but not the existence of this Agreement), are confidential, and shall not be disclosed during the term of this Agreement and for 3 years thereafter.

**D. Non-solicitation.** During the term of this Agreement and for 2 years immediately thereafter, Licensee shall not directly or indirectly, engage in, support, or facilitate: (i) solicitation or inducement of any employee or independent

contractor of HELM or of its affiliates to terminate or alter his, her or its relationship with HELM, or (ii) hiring or engaging any current or former employee or independent contractor of HELM, or (iii) disparagement of HELM, its owners, officers, independent contractors, employees, suppliers, resellers, or business reputation; (iv) solicitation or inducement of any person who was a customer of HELM for any product or service that substitutes or competes with all or part of the Product.

## **11. TERM & TERMINATION.**

**A. Term.** This Agreement commences on license fee commencement date and continues through the Initial Term (as stated on the signature page of this Agreement), and the term of this Agreement includes the Initial Term any additional period(s) under any extension, or automatic renewal of this Agreement.

**B. Suspension.** If Licensee fails to pay HELM any amount when due, HELM may suspend performance of its obligations and may restrict Licensee's access to the Software, but Licensee's obligation to continue to pay is not suspended. Failure to timely pay is also a material breach of this Agreement.

**C. Termination for Cause.** If either Party materially breaches this Agreement the other Party may provide notice of the breach and 30 days to cure it, and if it is not cured in that time the non-breaching Party may by notice terminate this Agreement.

**D. Termination for Insolvency.** This Agreement terminates without notice if either Party (i) voluntarily files a petition in bankruptcy, or (ii) is involuntarily petitioned into bankruptcy if the petition is not vacated within 30 days.

**E. Payments Due Upon Termination.** Upon any termination of this Agreement, other than with the required notice before the end of the Initial Term or of any renewal or extension of this Agreement, all sums owed by Licensee to HELM under this Agreement, including payments that would have accrued due through the Initial Term, or any extension or renewal thereof, (had the Agreement not been terminated) shall immediately be due and payable to HELM.

**F. No Liability for Termination.** When this Agreement terminates, HELM shall not be liable to Licensee for any third party for compensation, reimbursement, or damages on account of the loss of prospective profits, unfilled orders, or anticipated sales, or on account of expenditures, leases or commitments in connection with the business or goodwill of Licensee.

**G. Survival.** The obligations of Sections 1, 5.D, 8.C, 8.D, 9, 10, 11.E, 11.F, 11.G, and 12 shall survive the termination or any expiry or nonrenewal of this Agreement.

## **12. GENERAL PROVISIONS.**

**A. Notices.** All notices, reports, requests, approvals, and other communications required or permitted under this Agreement must be in writing and shall be: (a) delivered personally, (b) sent by email transmission with each transmission confirmed by telephone call to, or return email from, the receiving party, or (c) sent by registered mail to its address set forth in this Agreement. Such notice shall be treated as having been received upon the earlier of actual receipt or the date of confirmed delivery.

**B. Assignment and Successors.** Licensee may not transfer or assign, directly or indirectly, the whole or any part of this Agreement or any interest therein or any right or obligation thereunder, voluntarily or by operation of law without HELM's prior express consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and permitted assigns. Licensee must promptly notify HELM of any change of controlling ownership of Licensee. HELM may assign this agreement.

**C. Governing Law.** This Agreement shall be governed by the laws of the State of Michigan and the United States of America without regard to any conflict of law provisions thereof.

**D. Entire Agreement.** This Agreement (including its Schedules): (i) represents the entire agreement between the Parties relating to the subject matter of this Agreement, (ii) supersedes all prior agreements, understandings, representations, and warranties, including any communications written or oral between the Parties, and (iii) except for change in Schedules B (which may be amended unilaterally by either Licensee for its auto payment information) this Agreement may only be amended by a writing signed by both Parties which specifically refers to the sections to be amended. Provisions of any email, writing, purchase order or other document submitted by Licensee which are different from this Agreement are not binding on HELM.

**E. Allocation of Risk.** This Agreement, including the provisions for limitation of liability and disclaimers, allocates the risks of this Agreement between the Parties, and is reflected in the pricing of the Products and an essential element of the basis of the bargain between the Parties.

**F. Force Majeure.** Except for obligations to make payment, non-performance by either Party shall be excused to the extent that performance is rendered impossible or impracticable by any act or event outside the reasonable control of the Party, including terrorist acts, electrical power outages, and Internet interruptions.

**G. Severability.** If any provision of this Agreement is invalid under applicable law, such provision shall be limited, narrowed, construed and altered as necessary to render it valid, but only to the extent necessary to achieve such validity. The remaining provisions shall remain in full force and effect.

**H. Waiver.** Any waiver under this Agreement must be in writing and any waiver of one event shall not be construed as a waiver of any subsequent similar event.

**I. Construction.** Whenever the context reasonably permits, the singular shall include the plural, and vice versa,



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and the whole shall include any part thereof. The section and other headings are for convenience of reference only and shall not affect the interpretation of this Agreement. This Agreement represents the wording selected by the Parties to define their agreement and no rule of strict construction shall apply against either Party.

**J. Independent Contractors.** The Parties are and shall be independent contractors in the performance of this Agreement. Nothing in this Agreement shall be construed to **(i)** give either Party the power to direct or control the day-to-day activities of the other Party, **(ii)** constitute the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or franchise, or **(iii)** allow either Party to create or assume any obligation on behalf of the other Party for any purpose.